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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,974	03/19/2002	David R. Miller	P67626US0	5507

7590

11/04/2003

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WASHINGTON, DC 20004

EXAMINER

MCCROSKY, DAVID J

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/099,974

Applicant(s)

MILLER ET AL.

Examiner

David J. McCrosky

Art Unit

3736

-- The MAILING DATE of this c mmunication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-25 is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4, 7-9 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Simonsen et al (cited by Applicant). Simonsen et al teach a sensor with an arrangement having a large number of irradiation and detection sites. The arrangement allows many different combinations of irradiation and detection sites for example, two pairs of complementary emitter and detector elements that define two lines at right angles to each other. See col. 16, ll. 11-18 and Figure 12. Light of wavelength 805nm is emitted. Col. 19, ll. 31-34. The sensor body has upper and lower surfaces. A sensing pair and a normalizing pair are both on the lower surface. See col. 20, l. 48 to col. 21, l. 9 and Figs. 13 and 21.

Claim Rejections - 35 USC § 103

Claims 2, 3, 5, 6, 10, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simonsen et al, as applied to claims 1, 4, 7 and 12 above, and further in view of Kaffka et al. Simonsen et al teach a sensor as recited for claims 1 and 4. Simonsen et al do not teach a silicon detector. However, Kaffka et al teach that a silicon detector offers satisfactory performance to measure blood glucose. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sensor of Simonsen et al with a silicon detector, as taught by Kaffka et al,

so as to use a detector known for its satisfactory performance in measuring blood glucose.

Allowable Subject Matter

Claims 15-25 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the claims distinguish over the prior art in that a system and method having a sensor with two pairs of emitter and detector elements at right angles to each other is not taught for use with hemodialysis; nor are two pairs of emitter and detector elements at right angles to each other taught for measuring absorptivity of a tissue region.

Response to Arguments

Applicant's arguments filed 5 August 2003 have been fully considered but they are not persuasive. The argument on page 12 in the 2nd paragraph of the Response and Amendment is not supported by the specification. A complementary emitter/detector pair wherein the detector is calibrated to the emitter is not disclosed in the specification. Simonsen et al teach an arrangement that allows two pairs of complementary emitter and detector elements to define two lines at right angles to each other. The fact that there are multiple emitters and detectors is irrelevant since the claims are open ended. The emitters of Simonsen et al are LEDs of specific wavelengths. Even if all of the LEDs emit the same wavelength, they still emit specific wavelengths. The detectors of Simonsen et al are "complementary" to the LEDs as the term is used in the specification. See pages 6 and 9.

Examiner's detailed obviousness rejection followed the procedures required by MPEP § 706.02(j). The prior art Admission on page 13, lines 9-11 of the Response and Amendment is noted. The Admission illustrates Applicant's understanding that Kaffka et al was cited for the sole purpose of teaching a silicon detector.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. McCrosky whose telephone number is 703-305-1331. The examiner can normally be reached on Mon-Fri 8:30-5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F. Hindenburg can be reached on 703-308-3130. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DJM



ERIC F. WINAKUR
PRIMARY EXAMINER